

Agreement for access to poles, ducts, conduits, and rights-of-way satisfies the requirements of this checklist item, 15 FCC Rcd at 18479-80, ¶ 245; the Commission found that SWBT complied with this checklist item in Kansas and Oklahoma as well, Kansas/Oklahoma Order ¶ 255.

Because the SWBT Master Agreement is available in Missouri and Arkansas, that determination should be controlling here.

SWBT is furnishing 27 CLECs access to more than 1,179,000 feet of conduit space and 413 poles in Missouri and nine CLECs access to 514,856 feet of conduit space and 23,875 poles in Arkansas. Caraway MO Aff. ¶ 10 (App. A – MO, Tab 1); Caraway AR Aff. ¶ 10 (App. A – AR, Tab 2). This provisioning is “business as usual,” because SWBT has had practices and procedures for providing access to its facilities in place for more than 20 years. See Caraway MO Aff. ¶ 5; Caraway AR Aff. ¶ 5.

The Master Agreement. SWBT’s Master Agreement for access to poles, ducts, conduits, and rights-of-way, which has been incorporated into interconnection agreements approved by the Missouri PSC and the Arkansas PSC, establishes detailed rates, terms, and conditions of access. Caraway MO Aff. ¶ 9; Caraway AR Aff. ¶ 9, see also M2A Attach. 13 – Ancillary Functions, Exhs. 1-8; A2A Attach. 13 – Ancillary Functions, Exhs. 1-8. This agreement is the product of years of negotiations with cable providers pursuant to 47 U.S.C. § 224, as well as interconnection negotiations and arbitrations with CLECs pursuant to sections 251 and 252. Caraway MO Aff. ¶ 9; Caraway AR Aff. ¶ 9. The Master Agreement is available to any CLEC. Caraway MO Aff. ¶ 9; Caraway AR Aff. ¶ 9. SWBT will negotiate modifications or additions to the Master Agreement, upon request, and has entered into such customized agreements in Missouri and in Arkansas with AT&T and other carriers. Caraway MO Aff. ¶ 9; Caraway AR Aff. ¶ 9; see SWBT-AT&T Agreement – AR, Attach. 13 (App. B – AR); SWBT-AT&T

Agreement – MO, Attach. 13 (App. B – MO). The Master Agreement and SWBT's state-approved interconnection agreements incorporate rates that were negotiated with cable operators and comply with the methodology set out in section 224(d)(1). Caraway MO Aff. ¶¶ 33-35; M2A Attach. 13 – Ancillary Functions, Exh. 1; Caraway AR Aff. ¶¶ 33-35; A2A Attach. 13 – Ancillary Functions, Exh. 1.<sup>81</sup>

Evaluation of Facilities Requests. SWBT makes unassigned pole, duct, conduit, or right-of-way space available to all telecommunications carriers and cable operators, including SWBT itself, on a first-come, first-served basis. See Caraway MO Aff. ¶ 18; Caraway AR Aff. ¶ 18. SWBT evaluates CLECs' requests for access to poles, ducts, conduits, and rights-of-way by using the same capacity, safety, reliability, and engineering standards that apply to SWBT's own use of the facilities. Caraway MO Aff. ¶ 17; Caraway AR Aff. ¶ 17; see M2A Attach. 13 – Ancillary Functions; A2A Attach. 13 – Ancillary Functions. SWBT has not denied any request for access to its facilities under the 1996 Act; in the unlikely event that denial is necessary, SWBT will promptly contact the applicant to discuss alternatives. Caraway MO Aff. ¶¶ 10, 20; Caraway AR Aff. ¶¶ 10, 20. Applications that do not require "make-ready" work or other modifications to SWBT facilities are granted immediately, upon verification that the space is available. Caraway MO Aff. ¶ 21; Caraway AR Aff. ¶ 21.

Performance. SWBT has completed 96 percent of CLECs' requests for access to poles, conduits, and rights-of-way in Missouri within the established 35-day target interval over the past 12 months. See Dysart MO Aff. ¶ 48. On average, since August 2000 SWBT has required 14.12 days to process such requests. Id. In Arkansas, over the past 12 months SWBT has

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<sup>81</sup> See generally Report and Order, Amendment of Rules and Policies Governing the Attachment of Cable Television Hardware to Utility Poles, 2 FCC Rcd 4387 (1987), clarified, 4 FCC Rcd 468 (1989).

completed all five CLEC requests within the target interval, with an average of 11.4 days to process each request. See Dysart AR Aff. ¶ 51. These performance results demonstrate that SWBT's systems and processes provide nondiscriminatory access within the applicable benchmarks.

The Missouri PSC has expressly concluded that "SWBT offers nondiscriminatory access to poles, ducts, conduits, and rights-of-way in compliance with the requirements of [Checklist Item 3]." Final Missouri PSC Order at 78. The Arkansas PSC has likewise determined that "there is no evidence which suggests that SWBT is not currently providing nondiscriminatory access to the poles, ducts, conduits and rights-of-way." 2000 Consultation Report at 18. SWBT will continue providing such nondiscriminatory access in accordance with the obligations established by its interconnection agreements. See Caraway MO Aff. ¶ 8; Caraway AR Aff. ¶ 8.

**D. Checklist Item 4: Unbundled Local Loops**

Checklist Item 4 requires a BOC to make local loop transmission from a central office to customer premises available on an unbundled basis. See 47 U.S.C. § 271(c)(2)(B)(iv). In order to establish compliance with this checklist item, a BOC must demonstrate that it: (i) has a concrete and specific legal obligation to provide unbundled loops; (ii) is furnishing quality loops in quantities that competitors reasonably demand; and (iii) provides nondiscriminatory access to local loop transmission. Kansas/Oklahoma Order ¶ 178; Texas Order, 15 FCC Rcd at 18480-81, ¶¶ 247-248; New York Order, 15 FCC Rcd at 4095, ¶ 269.

SWBT fully complies with this checklist item, allowing CLECs to provide local service without matching SWBT's large, sunk investments in facilities that connect each customer premises to the public switched telephone network. SWBT offers CLECs a range of options for obtaining these loops on a pre-assembled basis or combining them with the CLECs' existing

facilities. SWBT has provisioned nearly 20,000 stand-alone loops in Missouri and more than 19,000 stand-alone loops in Arkansas. See Tebeau MO Aff. Attach. A; J.G. Smith AR Aff. Attach. A. In addition, SWBT has established nondiscriminatory processes and procedures for the provisioning of xDSL-capable loops and related services, and SWBT has complied fully with its obligations under the Line Sharing Order, the Line Sharing Reconsideration Order,<sup>82</sup> and the UNE Remand Order. See Part V.B, supra.

#### **1. Nondiscriminatory Access to Unbundled Loops Used for Advanced Services**

SWBT has in place the same processes and procedures for the pre-ordering, ordering, and provisioning of xDSL-capable loops and related services in Arkansas and Missouri as it does in Texas, Kansas, and Oklahoma. See Chapman AR Aff. ¶ 6; Chapman MO Aff. ¶ 6. These systems have been tested through extensive commercial usage in Missouri, and throughout SWBT's five-state region. SWBT's performance in pre-ordering, ordering, provisioning, and maintenance of xDSL-capable loops demonstrates that SWBT offers competing carriers nondiscriminatory access to xDSL-capable loops in Missouri and in Arkansas.

Kansas/Oklahoma Order ¶¶ 182-183; Texas Order, 15 FCC Rcd at 18498, ¶ 284.

Furthermore, Southwestern Bell has implemented a fully operational separate affiliate for the provision of all advanced services. Within both Missouri and Arkansas, ASI is SBC's exclusive provider of interstate and intrastate advanced services. See Habeeb Aff. ¶ 4. ASI uses the same ordering and provisioning systems and procedures that CLECs use when ASI requires

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<sup>82</sup> Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 16 FCC Rcd 2101 (2001).

unbundled loops, thus providing additional assurance that the available systems and procedures allow CLECs a meaningful opportunity to compete. See *Habeeb Aff.* ¶ 15. Since line sharing became operational throughout SWBT's region on May 30, 2000, ASI orders the HFPL using the same interfaces used by other CLECs. Id. ¶¶ 13-14. ASI is operating in accordance with structural separation and nondiscrimination rules that were approved by this Commission in both the SBC/Ameritech Merger Order and the New York Order. See generally *Habeeb Aff.* ASI's independent operations further guarantee that there is a level playing field in the market for advanced services in Missouri and Arkansas.

a. Processes for Ordering xDSL-Capable Loops

SWBT's xDSL-ordering processes allow CLECs to offer their customers any type of xDSL service, subject only to national industry standards for spectrum management. See *Chapman AR Aff.* ¶¶ 5, 99-101; *Chapman MO Aff.* ¶¶ 5, 99-101. These processes have been fine-tuned through extensive collaboration with the data CLECs under the supervision of the Texas Commission staff.

For pre-ordering, SWBT provides both unaffiliated CLECs and ASI nondiscriminatory access to actual loop make-up information through a combination of electronic and manual processes. See *Chapman MO Aff.* ¶¶ 15-47; *Chapman AR Aff.* ¶¶ 15-47; *Lawson MO Aff.* ¶¶ 100-103; *Lawson AR Aff.* ¶¶ 100-103; *Hamilton MO Aff.* ¶¶ 4-10 (App. A – MO, Tab 9); *Hamilton AR Aff.* ¶¶ 4-10 (App. A – AR, Tab 10); Kansas/Oklahoma Order ¶ 122; Texas Order, 15 FCC Rcd at 18435-36, ¶¶ 165-167. This loop “qualification” process provides CLECs with real-time electronic access to detailed information regarding the suitability of particular loops for xDSL services. See *Chapman MO Aff.* ¶ 18; *Chapman AR Aff.* ¶ 18; *Hamilton MO Aff.* ¶¶ 6-9; *Hamilton AR Aff.* ¶¶ 6-9. SWBT provides real-time access to actual loop make-up information

contained in the SWBT databases, including the actual loop length and the presence of any xDSL-disturbing devices. See Chapman AR Aff. ¶ 20; Chapman MO Aff. ¶ 20.

When a CLEC requests loop make-up information, SWBT's loop qualification software interacts with SWBT's Loop Facilities Assignment and Control System ("LFACS") and searches for a non-loaded copper loop connected to the specific customer premises for which LFACS contains actual loop make-up information. See Hamilton MO Aff. ¶ 6; Hamilton AR Aff. ¶ 6. SWBT's loop qualification system operates in a manner similar to the LFACS provisioning logic, by searching for the same type of loop that LFACS would provision if a carrier requested an xDSL-capable loop. See Hamilton MO Aff. ¶ 9; Hamilton AR Aff. ¶ 9. In full compliance with SWBT's obligations under the UNE Remand Order, the loop qualification system will return actual loop make-up information for the requested location when such information is available in LFACS. See Hamilton MO Aff. ¶¶ 6-9; Hamilton AR Aff. ¶¶ 6-9.<sup>83</sup> To the extent that actual loop make-up information is not available, SWBT provides real-time access to "designed" loop make-up information from a separate database.<sup>84</sup> See Chapman AR Aff. ¶ 21; Chapman MO Aff. ¶ 21; Lawson AR Aff. ¶ 102; Lawson MO Aff. ¶ 102. CLECs also have the option of requesting electronically that SWBT's engineering personnel perform a manual search for the actual loop make-up information in SWBT's electronic databases and paper records. See Chapman AR Aff. ¶¶ 22, 33-36; Chapman MO Aff. ¶¶ 22, 33-36; Lawson AR Aff. ¶ 103;

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<sup>83</sup> For a more detailed description of the particular manner through which actual loop make-up information from SWBT's electronic database is provided to affiliated and unaffiliated CLECs, see Hamilton MO Aff. ¶¶ 4-10. See also id. Attach. A (Horst Affidavit discussing Ernst & Young's attestation examination).

<sup>84</sup> "Designed" loop make-up information is based upon the standard design for the longest loop serving the end user's distribution area. See Chapman AR Aff. ¶ 21; Chapman MO Aff. ¶ 20.

Lawson MO Aff. ¶ 103. Once again, CLECs have access to the exact same information as SBC's retail operations, in the same manner and within the same time frames. See Chapman AR Aff. ¶ 23; Chapman MO Aff. ¶ 23.<sup>85</sup>

To obtain loops for their advanced services, Missouri and Arkansas CLECs use ordering and provisioning systems and processes that are largely the same as those used to provision ordinary, stand-alone (*i.e.*, uncombined) unbundled loops. See Chapman MO Aff. ¶ 4; Chapman AR Aff. ¶ 4. These order flows and interfaces were held to be nondiscriminatory in the Texas and Kansas/Oklahoma proceedings. Chapman MO Aff. ¶ 9; Chapman AR Aff. ¶ 9. Furthermore, to ensure nondiscriminatory access, ASI utilizes the same systems. See Habeeb Aff. ¶¶ 20-25. SWBT engineering personnel satisfy orders without regard to their source, such that the loop provisioning interval for CLECs is the same as or shorter than the equivalent interval for ASI. See Chapman MO Aff. ¶¶ 63-64; Chapman AR Aff. ¶¶ 63-64.

CLECs have the option of selecting the precise conditioning (*i.e.*, loop preparation) they desire. See Chapman MO Aff. ¶ 61; Chapman AR Aff. ¶ 61. All necessary conditioning for loops of 12,000 feet or less is performed automatically and without charge. Chapman MO Aff. ¶ 61; Chapman AR Aff. ¶ 61. In Arkansas, rates for conditioning are identical to the rates in Kansas.<sup>86</sup> In Missouri, all other rates for conditioning are currently under review by the Missouri

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<sup>85</sup> As William R. Dysart explains in his Affidavits, performance measurements for average response time for OSS pre-order interfaces were added to capture the OSS loop qualification performance with version 1.7 of SWBT's performance measurements. Data are being collected and reported on a diagnostic basis for the next six-month review. See Dysart AR Aff. ¶ 70; Dysart MO Aff. ¶ 71.

<sup>86</sup> Compare A2A Attach. xDSL at 12 with K2A Attach. xDSL at 12-13, attached as App. B – KS, Tab 1, to Joint Application by SBC Communications Inc., et al., For Provision of In-Region, InterLATA Services in Kansas and Oklahoma, CC Docket No. 00-217 (FCC filed Oct. 26, 2000).

PSC in Case No. TO-2001-439 and will be incorporated into the M2A once they have been established. See Hughes MO Aff. ¶ 33. In the interim, the Missouri PSC has adopted the Texas prices for loop conditioning, subject to true-up following the establishment of permanent rates. Interim Order at 6; Hughes MO Aff. ¶ 33; Sparks MO Aff. ¶ 154. These interim charges are contained in Attachment 25 to the M2A. See Sparks MO Aff. ¶ 154.

b. Southwestern Bell Is in Full Compliance with the Line Sharing and Line Sharing Reconsideration Orders

SWBT fully complies with all of its line sharing obligations, allowing competing carriers to provision data service over the HFPL that serves a SWBT voice customer. See Chapman MO Aff. ¶¶ 70-98; Chapman AR Aff. ¶¶ 70-90. After the Line Sharing Order was released, SWBT conducted a collaborative line sharing trial in each of the SWBT, Pacific Bell, Ameritech, and SNET operating regions. See Chapman MO Aff. ¶ 75; Chapman AR Aff. ¶ 75. Now that line sharing is commercially available, SBC is continuing to work collaboratively with the CLECs on an ongoing basis to resolve issues as they arise. Chapman MO Aff. ¶ 76; Chapman AR Aff. ¶ 76.<sup>87</sup>

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<sup>87</sup> SWBT makes line sharing available to CLECs in optional amendments to the M2A and the A2A that fully comply with the Line Sharing Order and the Line Sharing Reconsideration Order. See Sparks MO Aff. ¶ 13 & Attachs. C, D; Sparks AR Aff. ¶ 92 & Attach. C. As required by the Missouri PSC, the optional amendment to the M2A contains the same terms and conditions established in the Texas interim line sharing appendix to the T2A. See Sparks MO Aff. ¶¶ 13, 95. In both Missouri and Arkansas, any CLEC seeking alternative terms can initiate negotiations with SWBT and can request expedited dispute resolution by the state commission of any remaining dispute 45 days after SWBT's response to a request for new terms. See Sparks AR Aff. ¶ 92 & Attach. C; Sparks MO Aff. ¶ 95 & Attach. C. CLECs may also obtain terms and conditions for xDSL-capable loops and line sharing from SBC's 13-state generic interconnection agreement. See Sparks AR Aff. ¶ 93; Sparks MO Aff. ¶ 96. The pre-ordering, ordering, and provisioning processes for the HFPL UNE are nearly identical to those for an xDSL-capable loop. See Chapman MO Aff. ¶¶ 4, 70-98; Chapman AR Aff. ¶¶ 4, 70-98.



SWBT provides unbundled access to the HFPL, defined as “the frequency above the voice band on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voice band transmissions,”<sup>88</sup> whether SWBT’s voice customers are served by copper or by DLC facilities. See Sparks MO Aff. Attach. C, Optional Line Sharing Amendment § 2.6; Sparks AR Aff. Attach. C, Optional Line Sharing Amendment § 2.6. Moreover, CLECs can access the HFPL at either a SWBT central office or at a remote terminal. See Chapman MO Aff. ¶¶ 102-105; Chapman AR Aff. ¶¶ 102-105; Line Sharing Reconsideration Order, 16 FCC Rcd at 2106-07, ¶ 10.

SWBT allows CLECs to provide data service to SWBT voice customers served via DLC because it both unbundles the HFPL and provides access to the high-frequency portion of the copper distribution facilities. The obligations set forth in the Line Sharing Reconsideration Order extend no further. Indeed, as the Commission made clear in that order, “the high frequency portion of the loop network element . . . is only available on a copper loop facility.” Line Sharing Reconsideration Order, 16 FCC Rcd at 2107, ¶ 10. At the interface between the copper distribution plant and the fiber feeder segment, “line sharing” is, by definition, no longer possible.

The fact that carriers cannot strictly “line share” once the signal moves from copper to fiber facilities in no way eviscerates a CLECs’ ability to access the HFPL served by DLC, which is all that the Line Sharing Reconsideration Order requires. A CLEC can access the HFPL in one of two ways. First, to the extent that home run copper facilities are available to that customer

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<sup>88</sup> The optional Line Sharing Amendments to the M2A and the A2A define the HFPL in precisely the same language as is used in the Commission’s rules. See 47 C.F.R. § 51.319(h)(1). Likewise, this definition is substantively identical to that articulated in the Line Sharing Reconsideration Order itself. See 16 FCC Rcd at 2106-07, ¶ 10.

address, the CLEC can access the HFPL at the central office once SWBT moves the end user to a home run copper loop. See id. at 2109, ¶ 13 (“competitive LECs have the flexibility to engage in line sharing using [digital subscriber line access multiplexer (“DSLAM”)] facilities that they have already deployed in central offices”).

Alternatively, the CLEC can access the HFPL before the copper feeder enters the DLC equipment – typically at the serving area interface or fiber distribution interface – splitting the voice from the data component before the signals move onto fiber facilities. So long as the CLEC locates a DSLAM at or near the remote terminal, it can utilize available dark fiber or fiber feeder subloops to transmit the data signal through the central office and onto the packet switched network. See Chapman MO Aff. ¶¶ 104-106; Chapman AR Aff. ¶ 104-106. The Line Sharing Reconsideration Order simply made clear that CLECs can access “fiber feeder subloops for line sharing” or for any other purpose. 16 FCC Rcd at 2107, ¶ 10. See also id. at 2107, ¶ 12 (“We clarify that where a competitive LEC has collocated a DSLAM at the remote terminal, an incumbent LEC must enable the competitive LEC to transmit its data traffic from the remote terminal to the central office.”).

The Line Sharing Reconsideration Order does not require, and SWBT has no correlative obligation to provide, unbundled access to the packet switching functionality. As the Commission explained in its Clarification Order,<sup>89</sup> “the Line Sharing Reconsideration Order in no way modified the criteria set forth in the Commission’s UNE Remand Order regarding the unbundling of packet switching functionality.” Clarification Order ¶ 1. In the UNE Remand Order, the Commission made clear that an incumbent must unbundle packet switching only in

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<sup>89</sup> Order Clarification, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 & 96-98, DA 01-480 (FCC rel. Feb. 23, 2001).

the limited circumstances when “a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops.” 15 FCC Rcd at 3839, ¶ 313. So long as SWBT provides one or both of these alternatives, it need not offer packet switching. While the Commission is currently investigating whether to require unbundled access to the packet switching functionality provided by Next Generation Digital Loop Carrier (“NGDLC”) systems such as those employed as part of SBC’s Project Pronto, SWBT has no present obligation to unbundle those facilities.

c. Line Splitting

CLECs have the same options for line splitting in Missouri and Arkansas as they have in Texas, Kansas, and Oklahoma. See Chapman MO Aff. ¶ 107; Chapman AR Aff. ¶ 107; Kansas/Oklahoma Order ¶ 221. SWBT permits CLECs to engage in line splitting using SWBT’s UNEs in full compliance with this Commission’s rules. SWBT supports line splitting where a CLEC purchases separate UNEs (including unbundled loops, unbundled switching, and cross-connects) and combines them with their own (or a partner CLEC’s) splitter in a collocation arrangement. A CLEC may purchase an xDSL-capable loop UNE from SWBT and then provide both voice and data services over the loop. A single CLEC may choose to use a loop to provision both data and voice services, or one CLEC may provide voice service while another CLEC provides data service. Chapman MO Aff. ¶ 109; Chapman AR Aff. ¶ 109. By allowing CLECs to engage in line splitting, SWBT’s current offerings in Missouri and Arkansas meet all Commission requirements for line splitting. See Texas Order, 15 FCC Rcd at 18515-17, ¶¶ 323-329; Kansas/Oklahoma Order ¶¶ 220-221.

d. Performance in Provisioning xDSL-Capable Loops

In the Texas Order, this Commission commended the Texas Commission for developing comprehensive measures to assess SWBT's performance in provisioning xDSL-capable loops and related services in Texas. See 15 FCC Rcd at 18498, ¶ 283. In the Kansas/Oklahoma Order, the Commission concluded that SWBT had demonstrated "that it provisions xDSL-capable loops for competing carriers in substantially the same time and manner that it installs xDSL-capable loops for its own retail operations." Kansas/Oklahoma Order ¶ 185. In this Joint Application, SWBT relies upon the same comprehensive performance measures to demonstrate that it provides nondiscriminatory access to xDSL-capable loops and related services to CLECs in Missouri and in Arkansas. The individual disaggregated measures, more than 20 in all, detail SWBT's xDSL-capable loop performance in five categories: (i) average installation interval; (ii) missed installation appointments; (iii) quality of provisioned xDSL-capable loops; (iv) timeliness and quality of xDSL loop maintenance and repair; and (v) timeliness of access to pre-ordering and ordering information.<sup>90</sup> See Dysart AR Aff. ¶ 56; Dysart MO Aff. ¶ 52.

Arkansas. The market for advanced services in Arkansas remains embryonic. CLECs have placed a total of 287 xDSL-capable loop orders over the past 12 months, and only 27 xDSL-capable loop orders over the past three months. See Dysart AR Aff. Attach. Q (PMs 55.1-01 & 55.1-02). During the last three months for which data are available, there were no line-shared loops orders. SWBT's performance during those months with sufficient data points to provide statistically significant information demonstrates that SWBT offers Arkansas CLECs a meaningful opportunity to compete. See generally Dysart AR Aff. ¶¶ 56-72.

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<sup>90</sup> See Kansas/Oklahoma Order ¶¶ 182-197; Texas Order, 15 FCC Rcd at 18497-507, ¶¶ 282-306; New York Order, 15 FCC Rcd at 4123-24, ¶¶ 334-335.

For stand-alone xDSL-capable loops, SWBT's performance in Arkansas has been excellent across the board. SWBT has provisioned xDSL-capable loops well within the five-day benchmark (PM 55.1-01, 55.1-02), and has routinely met more than 95 percent of CLEC installation appointments. Id. ¶¶ 59-60, 62. Over the past five months, SWBT has not been responsible for a single missed due date (PM 58-09). Id. ¶ 62. SWBT additionally has provisioned high-quality loops, exceeding the relevant benchmark for all of the applicable metrics during each of the past two months (for PM 59-08), four months (for PM 65-08), or seven months (for PM 65.1-08). Id. ¶¶ 64-66. SWBT likewise provides high quality and timely maintenance and repair services, id. ¶¶ 67-68, and returns both loop makeup information and FOCs within a timely manner, id. ¶¶ 69-70, 72.

Moreover, because SWBT utilizes the same processes and procedures for the pre-ordering, ordering and provisioning of xDSL-capable loops throughout its five-state region, the Commission has made clear that SWBT can rely upon its performance in states with more extensive commercial usage to demonstrate checklist compliance. See Kansas/Oklahoma Order ¶¶ 35-36; Connecticut Order ¶¶ 14-15. SWBT's "anchor state" is Texas, where SWBT additionally has met or exceeded the applicable standards across each of the five performance areas that the Commission examines. SWBT's performance in provisioning xDSL-capable loops in Texas has been excellent. SWBT has met the applicable benchmark for average installation interval over each of the past nine months, see Dysart AR Aff. Attach. Q (Texas DOJ Report PM 55.1-01), and SWBT has averaged fewer than five percent missed due dates over the past three months. Likewise, SWBT continues to provision high-quality loops (PM 65-08), and continues to offer timely (PMs 67-08, 67-09) and high-quality maintenance and repair services (PMs 69-08, 69-09). Finally, SWBT returns FOCs within the applicable benchmark more than 99 percent

of the time, and SWBT provides Texas CLECs access to the same pre-ordering loop make-up information and in the same time and manner as that available to ASI. In light of SWBT's solid performance in Texas, where monthly volumes are in the thousands, there can be no question but that Arkansas CLECs have a meaningful opportunity to compete in the advanced services market.

Missouri. SWBT's comprehensive performance data in Missouri unequivocally demonstrate that SWBT provides nondiscriminatory access to xDSL-capable loops and related services. SWBT's performance has been excellent in four of the five categories, consistently meeting or exceeding the relevant benchmark or parity standard. Specifically, SWBT installs xDSL-capable loops for Missouri CLECs that are at least of the same quality as those provisioned for its own advanced services affiliate. See Dysart MO Aff. ¶¶ 61-63 (PMs 59-08, 59-09, 65-08, 65.1-08). SWBT also offers Missouri CLECs access to the same pre-ordering loop make-up information and in the same time and manner as that available to ASI. See id. ¶¶ 71-72. SWBT processes CLEC LSRs expeditiously, returning FOCs within the relevant benchmarks for roughly 99 percent of all xDSL orders. See id. ¶¶ 74-76. Finally, SWBT provides data CLECs with quality and timely maintenance and repair service for stand-alone and line-shared loops, again in parity with that provided to ASI and far surpassing the relevant benchmarks. See id. ¶¶ 66-70.

SWBT installed stand-alone xDSL-capable loops in Missouri within the five-day benchmark for each of the past seven months (PM 55.1-01), and SWBT has installed line-shared loops for CLECs more than half a day faster than for ASI over the past three months (PM 55.1-03). Id. ¶¶ 53-55 & Attach. B. Indeed, SWBT missed a mere one percent of installation appointments over the past six months (PM 58-09). Id. ¶ 56. For line-shared loops, however,

SWBT has missed the parity standard for installation appointments over the past two months. As Bill VanDeBerghe explains, because CLECs and ASI use different equipment and offer different services, the amount and type of work that needs to be performed in installing a line-shared loop varies between the carriers. See generally VanDeBerghe MO Aff. ¶¶ 46-55. That fact, coupled with the different manner in which SWBT's performance measures capture incorrect splitter assignments for CLECs (who predominantly use SWBT-owned splitters) and ASI (which owns its own splitters), largely accounts for the performance disparities in missed installation appointments.

In sum, SWBT's excellent performance in provisioning xDSL-capable loops and related services demonstrates both that SWBT provides nondiscriminatory access and that CLECs have a meaningful opportunity to compete in the market for advanced services in Missouri.

e. Performance in Provisioning BRI ISDN Loops

Arkansas. Although the Arkansas CLECs have not ordered BRI ISDN loops in significant volumes, SWBT clearly provides nondiscriminatory access to digital loops in full compliance with Checklist Item 4. SWBT provisions CLEC orders for BRI ISDN loops in Arkansas in substantially less time than for its own retail customers, roughly four times faster over the past 12 months. Dysart AR Aff. ¶ 74 (2.4 days versus 9.16 days). SWBT missed only a single CLEC ISDN BRI loop installation appointment over the last eight months (a 1.20 percent missed due date rate), despite missing more than 14 percent of retail installation appointments over that same time period. Id. ¶ 75. CLECs additionally have received high-quality BRI ISDN loops, id. ¶¶ 78-79, as well as faster and higher-quality maintenance and repair services, id. ¶¶ 80-81.

Missouri. While the absolute number of BRI ISDN loops ordered by competing carriers in Missouri remains small, the data clearly demonstrate that SWBT provides CLECs a meaningful opportunity to compete. See Dysart MO Aff. ¶ 77. As in Texas, Kansas, and Oklahoma, SWBT provisions CLEC orders for BRI ISDN loops in Missouri in less time than for SWBT's own retail customer orders. See Dysart MO Aff. ¶¶ 78-79; Kansas/Oklahoma Order ¶ 190. SWBT meets substantially more installation appointments for CLEC BRI ISDN loop orders in Missouri than for its own retail customer orders (PM 58-04), and provisions comparable quality BRI ISDN loops (PMs 59-03, 65-03). See Dysart MO Aff. ¶¶ 80, 85-87. Moreover, when appointments are missed, the average delay days for CLEC BRI ISDN loop orders are comparable to or less than the delay days encountered by SWBT retail customers (PM 62-04). See id. ¶ 82. SWBT also has performed necessary maintenance and repair work for CLEC BRI ISDN loops in substantially the same time and manner as for retail BRI loops in Missouri. See id. ¶¶ 88-89. Across the board, SWBT's performance in provisioning and maintaining BRI ISDN loops in Missouri is at least as good as, if not better than, that approved by this Commission in Texas, Kansas, and Oklahoma.

SWBT's excellent performance comes despite "the fact that competing carriers' use of BRI loops for IDSL service . . . makes provisioning work more difficult than that required for the ISDN service that SWBT provisions using BRI loops." Texas Order, 15 FCC Rcd at 18505, ¶ 301 (footnote omitted). SWBT has been working closely with data CLECs and industry vendors to resolve problems caused by the technical incompatibility of some CLEC-provisioned IDSL service with the industry-standard BRI ISDN loop that SWBT offers via the Marconi DISC\*S DLC system. SWBT has conducted internal tests on a new channel card, and continues to work with Marconi on efforts to make the DISC\*S system fully compatible with IDSL. See



Chapman MO Aff. ¶ 66. SWBT has also made extensive efforts to address its inability to test through the end user's equipment, budgeting more than two million dollars to buy new test sets and upgrade existing ones to ensure that it can fully test BRI ISDN loops ordered for IDSL service. Id. ¶¶ 67-69. As a result of these efforts, SWBT recently announced an IDSL-capable loop offering in Missouri. See Chapman MO Aff. ¶ 68 & Attach. D. While SWBT already provides CLECs a meaningful opportunity to compete, this new offering should further improve CLECs' ability to provision IDSL services.

f. SWBT's Broadband Service Offering

On September 8, 2000, the Commission agreed to modify the terms of the SBC/Ameritech Merger Conditions so as to allow SBC's incumbent LECs to own, operate, and install the plug-in cards and associated Optical Concentration Devices ("OCDs") integral to SBC's Project Pronto infrastructure deployment.<sup>91</sup> Through the deployment of NGDLC architecture and a massive investment in additional fiber facilities, SBC will eliminate the distance limitations that hinder DSL functionality and extend the availability of DSL services to 20 million customers who could not be served under SBC's network architecture. As the Commission explained, SBC's incumbent LECs will provide a broadband service offering on a wholesale basis to affiliated and unaffiliated advanced services providers. See Modification Order, 15 FCC Rcd at 17537, ¶ 30. All carriers, including ASI, can purchase this wholesale service on the same nondiscriminatory terms, and through use of the same pre-ordering and ordering systems.

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<sup>91</sup> See Second Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control, 15 FCC Rcd 17521, 17537, ¶ 30 (2000) ("Modification Order") ("We take no position on whether SBC's Broadband Offering is subject to sections 251-252 or any other provisions of the Act.").

The Modification Order, as the Commission emphasized, did not alter SBC's incumbent LECs' section 251 obligations, nor did it affect the evidentiary burdens of section 271. See 15 FCC Rcd at 17526-27, ¶ 9, 17537, ¶ 30. Likewise, the Modification Order did not "revise or restrict [the Commission's] existing definition of the local loop or the subloop network elements." Id. at 17537, ¶ 29. Project Pronto therefore has no bearing upon this proceeding. See Chapman AR Aff. ¶ 127; Chapman MO Aff. ¶ 127; Kansas/Oklahoma Order ¶¶ 244-245.

## **2. Nondiscriminatory Access to Stand-Alone Loops**

As in Texas, Kansas, and Oklahoma, SWBT's loop offerings in Missouri and Arkansas include 2-wire analog loops with 8 dB or 5 dB loss, 4-wire analog loops, 2-wire ISDN digital-grade lines, 4-wire DS1 digital grade lines, and various 2- and 4-wire loops capable of offering xDSL services. See Deere AR Aff. ¶¶ 91-94; Deere MO Aff. ¶¶ 91-94. SWBT provides unbundled access to DS3 loops – as required by the UNE Remand Order – through optional amendments to the M2A and the A2A. See Sparks AR Aff. ¶ 86 & Attach. B (optional A2A Amendment for UNE Remand Order); Sparks MO Aff. ¶ 89 & Attach. B (optional M2A Amendment for UNE Remand Order). Additional loop types are available through the Special Request process described in Part V.A.2, supra. See Deere AR Aff. ¶¶ 83-87; Deere MO Aff. ¶¶ 83-87. For the small percentage of Arkansas and Missouri end users served by IDLC equipment, SWBT provides unbundled loops through alternative facilities. See Deere AR Aff. ¶¶ 105-107; Deere MO Aff. ¶¶ 105-107.

For CLECs that choose to have SWBT provide loops on a physically separate basis, SWBT offers cross-connects that are matched to the loop type and arrangement selected by the CLEC. Deere AR Aff. ¶¶ 171-187; Deere MO Aff. ¶¶ 171-187. For CLECs that use SWBT loops and SWBT switch ports in combination, SWBT provides electronic access to automated

loop testing, thereby allowing the CLEC to analyze and identify problems with its end users' lines. See Deere AR Aff. ¶ 176; Deere MO Aff. ¶ 176.<sup>92</sup>

a. DS1 Loops

Arkansas. SWBT provides Arkansas CLECs nondiscriminatory access to high-quality DS1 loops in a timely manner, in full satisfaction of SWBT's obligations under Checklist Item 4. SWBT has met or exceeded the applicable three-day benchmark for installing DS1 loops during each of the past three months, during which time it missed installation appointments only 4.2 percent of the time. Dysart AR Aff. ¶ 96 (PMs 55-04.1, 58-06). Likewise, the data for PMs 65-05 (trouble report rate) and 65.1-05 (trouble report rate net of installation and repeat report) indicate that SWBT has met the relevant benchmark during the past three and four months respectively, and that SWBT's performance steadily improved despite increasing order volumes. Id. ¶ 97. When CLEC DS1 loops require maintenance and repair, SWBT has restored service in less time than for its own retail customers over the past year. Id. ¶ 99 (PM 67-05).

Missouri. SWBT provides DS1 loops to Missouri CLECs in less time and with the same quality as it provides DS1 loops to its own retail operations. The data for PM 55-04 (Average Installation Interval – DS1) indicate that SWBT has averaged 4.9 days to provision DS1 service to CLECs over the past 12 months, and only 3.4 days over the past four months. The data for PM 43-04 (Average Installation Interval – DS1 Specials), which captures SWBT's performance in provisioning DS1 service for its own retail operations, indicate that SWBT required an average of 11 days to provision DS1 service over the past 12 months, and an average of 7 days over the past four months. See Dysart MO Aff. ¶¶ 103-104 & Attach. B.

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<sup>92</sup> See Part II, supra, for a discussion of UNE pricing in Missouri and Arkansas.

The fact that SWBT has been unable to satisfy the rigorous “95% within three days” benchmark for PM 56-04.1 has not deprived any Missouri CLEC of a meaningful opportunity to compete. Because a retail analogue exists, the relevant metric is that of parity. See Kansas/Oklahoma Order ¶ 28 (“where a retail analogue exists, a BOC must provide access that is equal to (i.e., substantially the same as) the level of access that the BOC provides itself, its customers, or its affiliates, in terms of quality, accuracy and timeliness”). SWBT has performed well above the parity standard, installing DS1 loops for CLECs more than twice as fast as for retail DS1 loop orders.

SWBT has also been in parity for PM 58-06 (Percent SWBT Caused Missed Due Dates – DS1 loop) during each of the past ten months, and its missed due date rate has dropped in every single month from December 2000 through June 2001, even in the face of increasing volumes. See Dysart MO Aff. ¶ 105. As with the provisioning of xDSL loops, however, lack of facilities has a significant impact on SWBT’s ability to meet both its retail and CLEC due date commitments for DS1 loops. As Bill E. VanDeBerghe explains, SWBT has already taken significant steps to improve its timely provision of DS1 circuits, and these efforts are clearly reflected in the improved performance under PM 58-06 over the past months. The percentage of SWBT-caused missed due dates has fallen each month from Nov. 2000 to June 2001. See id.

The DS1 loops that SWBT provisions for Missouri CLECs are also of the same quality as the circuits that SWBT provides its retail customers. SWBT has achieved parity for PM 59-05 (Percent Installation Reports (Trouble Reports) Within 30 Days (I-30) of Installation – DS1 Loop) during each of the last 12 months in Missouri. See id. ¶ 107 & Attach. B (PM 59-05). Likewise, the 12-month average trouble report rate experienced by CLECs (3.6 percent) is less than that experienced by SWBT (4.0 percent) as reflected in the results for PM 65-05 (Trouble

Report Rate – DS1 Loop with Test Access). SWBT has achieved parity during each of the last 12 months. See id.

b. The NID and Subloop Unbundling

In addition to loops themselves, CLECs are able to obtain and use the NID under terms and conditions approved by the Arkansas and Missouri Commissions. See Deere AR Aff. ¶¶ 77-82; Deere MO Aff. ¶¶ 77-82. CLECs may connect to the customer's inside wire at SWBT's NID at no charge, or they may pay SWBT to perform any NID repairs, upgrades, disconnects, or rearrangements they desire. See Deere AR Aff. ¶ 80; Deere MO Aff. ¶ 80. SWBT also provides and connects the NID at no additional charge when CLECs order an unbundled loop. See Deere AR Aff. ¶ 81; Deere MO Aff. ¶ 81.

In both Missouri and Arkansas, CLECs can order sub-elements of the local loop from SWBT on an unbundled basis. See Deere MO Aff. ¶¶ 95-107; Deere AR Aff. ¶¶ 95-107. Available sub-elements include loop distribution facilities (the segment of a loop between a remote terminal and an end user's network interface device or other point of demarcation), see Deere MO Aff. ¶ 98; Deere AR Aff. ¶ 98, dark fiber, see Deere MO Aff. ¶¶ 100-102; Deere AR Aff. ¶¶ 100-102, and the digital loop carrier, see Deere MO Aff. ¶ 106; Deere AR Aff. ¶ 106. These subloop offerings satisfy this Commission's subloop unbundling requirements. See UNE Remand Order, 15 FCC Rcd at 3789-800, ¶¶ 206-229. Indeed, this Commission has previously approved of SWBT's dark fiber and subloop unbundled offerings. Id. at 3786, ¶ 199, 3799, ¶ 227 & n.445.

c. Performance

Comprehensive performance measurements confirm SWBT's ability to process unbundled-loop orders, to provision these loops, and to bill for them, all the while ensuring that

these transactions flow through SWBT's systems in a timely and accurate fashion. See generally Dysart AR Aff. ¶¶ 52-104; Dysart MO Aff. ¶¶ 49-113. Indeed, SWBT's performance in the ordering, provisioning, maintenance, and repair of unbundled loops in Missouri and in Arkansas is at least as good as in Texas, Kansas, and Oklahoma. See Dysart MO Aff. ¶ 21; Dysart AR Aff. ¶¶ 21, 53.

Arkansas. SWBT's performance in the processing, provisioning, maintenance, and repair of unbundled loop requests has been stellar, guaranteeing that all Arkansas CLECs have a meaningful opportunity to compete to serve local customers. During the period from April – June 2001, SWBT met or exceeded the applicable standard for 95.7 percent of unbundled loop measures. See Dysart AR Aff. ¶ 53. SWBT provides CLECs voice-grade unbundled loops in a timely manner, causing few missed installation appointments. Over the past 12 months, SWBT has installed 97.6 percent of 8.0dB loops within the applicable three-day benchmark, and the installation interval has averaged just 2.4 days. Id. ¶ 82. During that same time period, SWBT missed more than twice as many installation appointments for its retail customers than for CLECs (9.3 percent retail versus 4.1 percent wholesale) (PM 58-01). CLECs have experienced troubles at a lesser rate than SWBT's retail customers, with an average monthly trouble rate for 8.0 dB loops with test access (PM 65-01) of only 0.93 percent over the past five months, as compared to 1.2 percent for SWBT's retail customers. Id. ¶ 85. CLECs have also received faster and superior quality repair services (PMs 66-01, 67-01, 69-01) for each of the past three months. Id. ¶¶ 86-87 & Attach. A. Finally, SWBT met or exceeded the relevant FOC return benchmark during each of the past three months for loop orders submitted either manually (PM 5-29) or over the LEX and EDI interfaces (PMs 5-01, 5-04, 5-07, 5-15, 5-18, 5-21). Id. Attach. A.

Missouri. SWBT's performance in the processing, provisioning, maintenance, and repair of unbundled loop requests in Missouri has been superb. In fact, SWBT has achieved parity or the associated benchmark for 87.5 percent of the unbundled local loop measures during the April – June 2001 period in Missouri. See Dysart MO Aff. ¶ 49. SWBT provides competing carriers with voice-grade unbundled loops in substantially the same time and manner as it does in serving SWBT's own retail customers. Id. Over the past 12 months, SWBT has installed 99.1 percent of 8.0 dB loops within the applicable three-day time period, and the average installation interval for all 8.0 dB loops has been 2.9 days. See id. ¶ 90. For both residential and business service, and across loop type, the percentage of SWBT-caused missed due dates has been higher for SWBT retail customers than for CLECs. Id. ¶ 91 & Attach. B (UNE loop and port combinations, 5.0 dB and 8.0 dB loops (PMs 29-05, 58-01, 58-02, 58-04)). CLECs have experienced troubles at a lesser rate than SWBT's retail customers, with an average monthly trouble rate for 8.0 dB loops with test access (PM 65-01) of only 0.9 percent, as compared to 1.9 percent for SWBT's retail customers. Id. ¶ 95. CLECs have also received faster and superior quality repair services (PMs 66-01, 67-01, 67-02, 69-01) for each of the past three months. Id. ¶¶ 96, 99-100 & Attach. B.

Provisioning performance data additionally show that SWBT has met or exceeded the 95-percent five-hour FOC return benchmark for loop orders submitted over the EDI or LEX interface for each of the past three months. See id. Attach. A (PMs 5-01, 5-04, 5-07). Likewise, SWBT met or exceeded the 94-percent 24-hour FOC return benchmark for complex business orders submitted over the LEX interface for each of the past three months. See id. (PM 5-02). Finally, SWBT easily exceeded the 95-percent 24-hour FOC return benchmark for manually submitted loop orders over that same time period. See id. (PM 5-29).

d. Coordinated and Frame Due Time Conversions (“Hot Cuts”)

As in Texas, Kansas, and Oklahoma, SWBT offers Missouri and Arkansas CLECs a choice between two different methods of coordinated conversions – the fully coordinated hot cut (“CHC”) process and the frame due time (“FDT”) hot cut process – allowing CLECs to select the process that best fits their resources and priorities. See Final Missouri PSC Order at 49; D. Smith MO Aff. ¶ 33; D. Smith AR Aff. ¶ 33. The same CHC and FDT processes, procedures, and performance measurements evaluated and approved by the Commission when reviewing SWBT’s Kansas, Oklahoma, and Texas applications are used in Missouri and Arkansas as well. D. Smith MO Aff. ¶ 34; D. Smith AR Aff. ¶ 34. SWBT also has ample resources to satisfy CLEC demand for either CHC or FDT conversions, providing Missouri and Arkansas CLECs the ability to “choose freely between the CHC and FDT hot cut processes.” Kansas/Oklahoma Order ¶ 201; Texas Order, 15 FCC Rcd at 18487, ¶ 261. Because SWBT provisions high-quality coordinated conversions in a timely manner and with a minimum of service disruption, SWBT provides CLECs a meaningful opportunity to compete. Kansas/Oklahoma Order ¶ 201; Texas Order, 15 FCC Rcd at 18487, ¶ 261.

In the Texas and Kansas/Oklahoma proceedings, SWBT demonstrated that its CHC process satisfied this Commission’s hot cut standards for timeliness, quality, and minimal installation troubles. See Kansas/Oklahoma Order ¶¶ 202-207; Texas Order, 15 FCC Rcd at 18487, ¶ 261. In the Texas proceeding, SWBT additionally demonstrated that it provisions FDT hot cuts in a timely manner and with a minimum number of troubles following installation, but the number of service disruptions for FDT hot cuts exceeded the relevant benchmark. Texas



Order, 15 FCC Rcd at 18492, ¶ 271.<sup>93</sup> During the Texas and Kansas/Oklahoma proceedings, the Commission made clear that, for purposes of compliance with this checklist item, SWBT could demonstrate that it provided nondiscriminatory access to coordinated conversions through the CHC process alone. Kansas/Oklahoma Order ¶ 201; Texas Order, 15 FCC Rcd at 18492-93, ¶ 272. In Missouri, however, SWBT can demonstrate compliance with the Commission's hot cut standards through both the CHC and the FDT process. See Final Missouri PSC Order at 50.

Arkansas. SWBT's performance in the provisioning of CHC in Arkansas easily satisfies the criteria approved by the Commission for demonstrating compliance with this checklist item. See D. Smith AR Aff. ¶¶ 33-44. Specifically, between April and June 2001, SWBT completed 97.6 percent of CHC conversions (for orders of fewer than ten lines) in Arkansas within the one-hour time frame. Id. ¶ 35. These results far exceed the 90-percent standard approved by this Commission in the New York and Texas proceedings. See Texas Order, 15 FCC Rcd at 18489, ¶ 264; New York Order, 15 FCC Rcd at 4114-15, ¶ 309. During that same time period, SWBT completed all CHC conversions without a single premature disconnect and 98.26 percent without a provisioning trouble report ("PTR"), again well above the 95-percent rate for service outages articulated by the Commission. See D. Smith AR Aff. ¶¶ 36-39. Finally, SWBT has calculated trouble reports received on CHC and FDT conversions within seven days of installation (I-7). SWBT received trouble reports within seven days of installation for only 1.31 percent of CHC conversions completed between April and June 2001, easily meeting the two-percent benchmark applied by this Commission in the New York Order. See D. Smith AR Aff. ¶ 42.

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<sup>93</sup> In the Kansas/Oklahoma proceeding, the Commission found that CLECs had not yet placed a sufficient number of FDT orders to allow the Commission to conclude that SWBT had satisfied this checklist item based on the FDT hot cut process alone. Kansas/Oklahoma Order ¶¶ 200-201.